

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EDWARD WAGNER,)
Plaintiff,) Case No. C06-1400-RSL-JPD
v.)
MICHAEL J. ASTRUE, Commissioner,) REPORT AND RECOMMENDATION
Social Security Administration,)
Defendant.)

I. INTRODUCTION AND SUMMARY CONCLUSION

On January 18, 2007, the parties in the above-captioned case stipulated that this matter be reversed and remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. No. 11. On January 22, 2007, this Court ordered that the Commissioner's decision in this case be reversed and remanded for further administrative proceedings. Dkt. No. 12. The present matter comes before the Court on plaintiff's motion for attorney's fees, costs, and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. No. 14. Defendant filed a response opposing the motion (Dkt. No. 15), to which plaintiff replied. Dkt. No. 17. After careful consideration of the pleadings, supporting materials, governing law, and the balance of the record, the Court recommends that plaintiff's motion for award of attorney's fees be GRANTED IN PART and fees AWARDED, as set forth below.

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02 II. FACTS AND PROCEDURAL BACKGROUND

03 On January 22, 2007, this Court ordered that the Commissioner's decision in this case
04 be reversed and remanded for further administrative proceedings. Dkt. No. 12. Judgment by
05 the Court was entered on June 4, 2007. Dkt. No. 16. During the period between entry of the
06 Court's order for remand, and the Court's entry of judgment to that effect, plaintiff's counsel
07 requested an award of attorney's fees under the EAJA. Dkt. No. 13. Defendant challenged
08 this motion for fees on May 30, 2007, based on the untimely and unreasonable nature of the
09 fee request. Dkt. No. 15. After the Court's judgment was entered in this case, plaintiff filed
10 a reply regarding attorney's fees stating that the initial motion for fees was premature because
11 it was filed prior to the Court's entry of judgment, but nevertheless urging the Court to award
12 fees at this time. Dkt. No. 17.

13 III. DISCUSSION

14 A. Timeliness of Plaintiff Counsel's Motion for Fees

15 In order to recover attorney's fees under the EAJA, the prevailing party "shall, within
16 thirty days of final judgment in the action, submit to the court an application for fees and
17 other expenses." 28 U.S.C. § 2412(d)(1)(B). A judgment becomes final once it is no longer
18 appealable. 28 U.S.C. § 2412(d)(2)(G). In civil cases that include the United States as a
19 party, the period for appeal is sixty days after entry of final judgment. Fed. R. App. P.
20 4(a)(1)(B). The thirty day period for request of EAJA attorney's fees begins as soon as the
21 right to appeal the Court's final judgment expires. *Shalala v. Schaefer*, 509 U.S. 292, 294
22 (1993). The thirty day period for EAJA attorney's fee requests begins when the Court enters
23 a final judgment, which must be "set forth . . . on a separate document." *Id.* at 302. (internal
24 quotations omitted).

25 The Court entered a separate final judgment in this case on June 4, 2007. Dkt. No. 16.
26 The time limits for requesting fees under the EAJA have therefore not expired, and plaintiff's

01 motion for attorney's fees is not time barred. Conversely, plaintiff's motion is premature as it
 02 was filed prior to entry of a final judgment in the case. As both parties make clear in their
 03 briefs however, this Court has the discretion to grant attorney's fees even when untimely.
 04 Dkt. No. 15, 17. *See also Van v. Barnhart*, 483 F.3d 600, 603 n.2 (9th Cir. 2007). A grant of
 05 EAJA fees prior to entry of a final judgment would not be prudent. *See, e.g., Sohappy v.*
 06 *Hodel*, 911 F.2d 1312, 1321 (9th Cir. 1990) (court refused to grant fees to petitioner because
 07 a final judgment had not yet been entered). However, in this case the judgment has now been
 08 entered, and as a practical matter the Court finds that the request for attorney's fees is now
 09 proper and should be considered.

10 B. Reasonableness of Fees Requested

11 The EAJA entitles prevailing parties to "reasonable fees and expenses of attorneys."
 12 28 U.S.C. § 2412(b). Reasonable fees may be calculated based on "the number of hours
 13 reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v.*
 14 *Eckerhart*, 461 U.S. 424, 433 (1983). The only challenge made by the defendant in this case is
 15 to the reasonableness of time expended by plaintiff's counsel, the defendant does not challenge
 16 the reasonableness of the hourly rate. Dkt. No. 15.

17 The Court finds that the hourly rate charged by plaintiff's counsel is reasonable. As to
 18 the number of hours included in plaintiff's motion, the Court finds that these fees are
 19 reasonable with the exception of the unsubstantiated charges for teleconference with a party
 20 identified only as "RH," and time charged to review the Court's order allowing plaintiff to
 21 proceed *in forma pauperis*. Plaintiff's request for an additional three hours spent engaged in
 22 the present fee request is also permissible under the EAJA and should be granted. *See Comm'r*
 23 *of INS v. Jean*, 496 U.S. 154, 163 (1990) (finding that district courts have wide discretion in
 24 awarding fees).

25 IV. CONCLUSION

26 Plaintiff's attorney, Mr. George Andre Fields, should be awarded attorney's fees in

01 the amount of \$2,382.56 based on 14.55 hours work at the rate of \$163.75 per hour, as well
02 as expenses in the amount of \$13.95 under the EAJA, 28 U.S.C. § 2412. A proposed Order
03 Awarding Attorney's Fees, Costs, and Expenses accompanies this Report and
04 Recommendation.

05 DATED this 26th day of June, 2007.

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08 JAMES P. DONOHUE
09 United States Magistrate Judge
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